

**Federal Energy Regulatory Commission
February 2, 2006 Commission Meeting
Statement of
Chairman Joseph T. Kelliher**

E-1 (ERO Rule)

Today, the Commission issues final rules to implement our reliability role under the Energy Policy Act of 2005. Under the new law, the Commission is charged with certifying an Electric Reliability Organization (ERO), establishing North American and regional reliability standards, authorizing delegation of enforcement responsibility from the ERO to regional entities, overseeing the enforcement of mandatory North American and regional reliability standards, among other duties.

Assuring reliability of the bulk power system is arguably the most important responsibility given the Commission by the Energy Policy Act. The last three major regional blackouts, most recently in Augusts 2003, were all caused in part by violations of voluntary, unenforceable reliability standards. The third time was the charm, and Congress enacted legislation providing for mandatory, enforceable reliability standards.

The Commission moved swiftly on reliability rules, issuing proposed rules only three weeks after the Energy Policy Act was signed into law. Altogether, roughly 1,700 pages of comments were filed on the proposed rule. Those comments were thoroughly reviewed and helped shape the final rule. A number of significant changes were made to the proposed rule, in large part based on public comments.

As the rulemaking proceeded, the Commission acted to improve its ability to discharge its responsibilities under the Act once an ERO is certified and reliability standards are established. Last fall, in order to prepare the Commission to discharge its legal duty to review proposed reliability standards, I directed Commission staff to hold a series of technical conferences with industry and stakeholders to review current North American and regional reliability standards. These technical conferences reviewed procedures for establishment, approval, and enforcement of electric reliability standards. As a result of these conferences, we are in a better position to review reliability standards.

The final rule is faithful to clear Congressional intent manifested in the plain words and structure of the law. The Energy Policy Act gave the Commission the important duty of assuring the reliability of the bulk power system. We will exercise that duty by certifying an ERO, carefully reviewing proposed reliability standards, approving standards that provide for reliable operation of the bulk power system, remanding those that do not, and working to improve reliability standards over time. We will review proposed reliability standards to assure that they not only have technical support but also are written to be enforceable against "all users, owners, and operators of the bulk power system," as required by law.

I am committed to faithfully executing the Energy Policy Act in the manner Congress intended. The law does not provide for absolute uniformity in reliability standards. That much is clear from the plain words and structure of the law. Under the Energy Policy Act, regional entities will propose regional standards or variances to the national reliability organization charged with standards development, the ERO, which can then propose to the Commission those regional

standards that it has approved. Congress would not have provided for consideration of regional standards or variances if it had intended a “one size fits all” approach.

We had both North American and regional reliability standards before enactment of the Energy Policy Act. I expect we will continue to have both North American and regional reliability standards after issuance of the final rule.

The Energy Policy Act of 2005 also gave the Commission important new responsibilities to ensure that approved mandatory reliability standards are properly enforced. We will also ensure that reliability standards are properly enforced, including, where appropriate, through regional enforcement of such standards. The Act allows for delegation of enforcement authority to regional entities that meet certain statutory tests. But, the Commission has ultimate responsibility to enforce reliability standards.

I want to emphasize the importance of assuring effective enforcement of reliability standards. There has been a great deal of attention in recent months to working to get the right standards in place. That is half of the job. The other half is to make sure that reliability standards, once approved, are effectively enforced. Inconsistent and inconstant enforcement of even the most robust standards will not assure reliability.

Once our rule is final, our attention will turn to the application for ERO certification. It is critical that the ERO be a strong organization. A strong ERO will be one that maintains its independence, is adequately staffed to perform its important functions, and exercises careful oversight of the actions of regional entities. Regional entities will perform certain important functions pursuant to delegation agreements, including proposing reliability standards and undertaking enforcement action. However, the ERO must exercise close oversight in these areas to ensure that any proposed standards adequately maintain reliability and do not burden other regions, and that regional enforcement programs are of the highest quality.

Under the law, the Commission must approve any reliability standard before it becomes enforceable. I am operating under the expectation that it is the Version 0 standards that will be proposed to the Commission for its consideration and review. In anticipation of the filing of Version 0 standards, the Commission has been conducting a constructive review of existing reliability standards. We have been examining the existing Version 0 standards and the relationship of Version 0 standards to regional standards. We are prepared to begin our review of proposed reliability standards.

Our constructive review has been instructive. We have learned that a significant portion of NERC’s existing standards – about 25 percent – are in the form of obligations for the regional reliability organization to define regional criteria and procedures necessary to implement the NERC reliability standard. This is particularly true in certain subject areas, such as system planning. In addition, some regional variances have been incorporated into NERC reliability standards when necessary to address physical differences of the interconnections or market protocols used in organized markets.

I will make no promise that the reliability standards ultimately established by the Commission will never be violated. I can promise that, unlike in the past, if established reliability standards are violated, the violator will be subject to significant civil penalties.

I support the final rule.